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EX PARTE OR LATE FILED

July 26, 1996

Ex Parte

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 95-185 (LEC-CMRS Interconnection)

Dear Mr. Caton

Please accept for filing the attached letter addressed to Chairman Hundt regarding the above-referenced matter. Due to the press of business, we are filing this today.

Sincerely,

Attachment

cc: Chairman Hundt

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D.T. Hubbard
Senior Vice President

SBC Telecommunications, Inc.
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July 25, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554-0001

Re: CC Docket No. 95-185 (LEC-CMRS Interconnection)

Dear Mr. Chairman:

This letter will provide an additional update regarding developments in the area of LEC to CMRS interconnection. In particular, I want to inform the Commission that Southwestern Bell Mobile Systems ("SBMS"), SBC's wireless affiliate has successfully negotiated yet another LEC to CMRS interconnection agreement which both reduces interconnection charges and establishes mutual compensation between a landline carrier and SBMS cellular operations. I also address below recent jurisdictional arguments made by CTIA which are ill informed.

Attached for your information is a copy of an interim agreement between New England Telephone and Telegraph Company ("NET") and SBMS for interconnection in the Commonwealth of Massachusetts. You will note that this Agreement is styled an Interim Agreement in recognition by both parties that the Commission will soon be establishing interconnection rules which might affect the terms and conditions of interconnection among all telecommunications carriers.

As you know, SBMS previously entered into the first post Telecommunications Act LEC to CMRS interconnection agreement when it established such an arrangement with Ameritech for SBMS' Illinois operations. This agreement has been approved by the Illinois Commerce Commission and is in effect.

Like the agreement between SBMS and Ameritech, the SBMS/NET agreement is significant both for the terms it contains as well as those which are not included. For example, there are no term or volume commitments required of SBMS to obtain mutual compensation and reduced access charges. In addition, SBMS has

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the right to obtain the benefit of any additional or later agreements which are established between NET and third parties should SBMS determine that those later agreements provide more advantageous interconnection arrangements.

More importantly, in light of the continued controversy regarding the ability of CMRS providers to obtain negotiated interconnection arrangements, this Agreement contains provisions which significantly reduce the interconnection fees paid by SBMS to NET and call for reciprocal compensation by NET to SBMS. This Agreement establishes an interconnection rate at 1.5 cents per minute of use for Feature Group 2A service. This represents approximately a 50% reduction in interconnection fees from what SBMS had been assessed. Previous charges included a per call charge of approximately 2.8 cents and a per minute charge of approximately 1.6 cents. In Massachusetts, SBMS' customer's calls average two minutes in duration; as a result, prior to this Agreement, the SBMS interconnection charges averaged 6 cents per average call. With this Agreement SBMS will simply pay interconnection fees at a rate of 1.5 cents per minute. In addition, SBMS will be compensated at the rate of 1.5 cents per minute of use for traffic which it receives from NET.

You may have recently received information regarding an agreement between New England Tel and MFS for interconnection at different rates, possibly as low as .9 cents per minute of use. While this agreement may appear to be more advantageous than the agreement which SBMS reached with NET, that is not the case. SBMS offers an extremely wide local calling area and entered these negotiations with the view of obtaining a definition of a local call which minimizes intraLATA toll charges. SBMS was successful in negotiating the definition of local call that obtains this objective. As a result, over 98% of the SBMS' calls in Massachusetts will be classified as local, thereby avoiding the imposition of intraLATA toll charges. The MFS agreement on the other hand, while obtaining a lower interconnection rate, will incur intraLATA toll charges for calls which will be defined as local under the SBMS agreement. While the MFS agreement may be an excellent agreement for MFS, the agreement which SBMS obtained is more advantageous to it as a wireless carrier. This is a perfect example of the benefits afforded by the flexibility of voluntary negotiations rather than a "one size fits all" approach for detailed regulation.

Unfortunately this docket continues to generate significant activity in the form of ex parte filings and discussions. Those discussions also address the question of the FCC's jurisdiction under Section 332(c) of the Telecommunications Act. Many wireless carriers and wireless organizations continue to assert that the FCC was granted exclusive jurisdiction which, according to CTIA was " . . . not repealed or

amended (Emphasis added) by the Telecommunications Act of 1996"¹ CTIA and others go on to suggest that the FCC must interject itself in establishing LEC to CMRS interconnection rates and that it has exclusive jurisdiction to do so.

In making these arguments, however, CTIA and other wireless carriers ignore previous conclusions reached by this Commission regarding Section 332(c) and its impact on the jurisdiction of state commissions to regulate such rates. For example, in reviewing the petitions of a number of states, particularly the Louisiana Public Service Commission ("LPSC") the FCC has addressed this issue squarely. The LPSC in its petition seeking authority to continue to regulate cellular carriers, specifically pointed out areas for which it sought the authority to continue to regulate. In its petition, the LPSC pointed out that the then current regulation consisted of, among other things, setting and approving interconnection rates that landline providers charge CMRS providers.² In reviewing this petition and in rejecting the LPSC's authority to regulate rates charged by CMRS providers, the FCC specifically noted that this particular regulatory activity by Louisiana was not preempted by Section 332(c). In its Report and Order resolving the LPSC Petition, the FCC stated, "Finally, we note that Louisiana's regulation of the interconnection rates charged by landline telephone companies to CMRS providers appears to involve rate regulation only of the landline companies (Emphasis added) not the CMRS providers and thus does not appear to be circumscribed in any way by Section 332(c)(3)."³ It is this very issue which CTIA and others continue to urge the Commission to take up, yet again, by asking the Commission to impose a bill and keep mechanism on LEC to CMRS interconnection. This, the Commission should refuse to do. As noted in the Louisiana Order, cited above, this Commission has already concluded that state commissions retain the jurisdiction to regulate rates charged by landline telephone companies to CMRS providers. As noted in the CTIA White Paper No. 1, the Telecommunications Act of 1996 did not repeal or amend the FCC's jurisdiction under Section 332. As a result, this Commission should reject the efforts of CTIA and others to relitigate a matter previously resolved by this Commission

¹See, "LEC-CMRS Interconnection White Paper No. 1, First Series, Telecommunications Competition: In the Midst of Plenty, It's Under Attack" submitted by CTIA on June 28, 1996, at p. 6.

²See, Petition on Behalf of Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, PR Docket No. 94-107, (Louisiana Petition, at pp. 7-23).

³See, In the Matter of Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, Report and Order, 10 FCC Record 7898, 1995 FCC Lexis 3377-3378 (the "Louisiana Order").

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SBC has once again shown that CMRS providers have significant and sufficient bargaining power to obtain interconnection rights and benefits through the negotiation process. Other wireless carriers can and should enter into negotiations with local exchange carriers to obtain interconnection arrangements under the Telecommunications Act. This Commission should reject any assertions that it must inject itself into the LEC to CMRS interconnection process with any artificial result such as bill and keep or a rate proxy/cap and should instead encourage the wireless industry to obtain interconnection through the flexible negotiation process.

Very truly yours.

A handwritten signature in black ink, reading "D. T. Hubbard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Attachment

cc: Commissioner Quello
Commissioner Chong
Commissioner Ness
Ms. Allen
Mr. Atlas
Mr. Baca
Ms. Brinkmann
Mr. Casserly
Ms. Chorney
Mr. Coltharp
Ms. Farquhar
Mr. Gonzalez
Ms. Keeney
Mr. Metzger
Mr. Nakahata
Mr. Siddall
Ms. Toller

Chairman Hundt

July 25, 1996

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bcc: Mr. Dreyer
Mr. Barry

INTERIM INTERCONNECTION AGREEMENT

Pursuant to this Agreement, Southwestern Bell Mobile Systems ("SBMS") d/b/a Cellular One and New England Telephone and Telegraph Company ("NET"), d/b/a NYNEX, document understandings and agree to extend certain arrangements to one another in the Commonwealth of Massachusetts, on an interim basis, as described and according to the terms, conditions and pricing specified herein.

1. DESCRIPTION OF ARRANGEMENTS AND COMPENSATION

This Agreement provides for the provision and maintenance of the following arrangements between the networks of SBMS and NET.

a) INTERCONNECTION ARRANGEMENT

Description. Both parties will interconnect their respective networks based upon the Feature Group 2A ("FG2A") access arrangement, as specified in NET's intrastate access tariff (Massachusetts Tariff D.P.U. No. 15, Section 6). FG2A, which is available at appropriately equipped NET designated electronic access tandems, provides trunk side access to NET end offices and local service providers end office switches which subserve that access tandem with an associated seven or ten digit access code (i.e., telephone number) for the customer's use in originating and terminating intraLATA communications.

In accordance with the applicable intrastate access tariff, FG2A may have access to a trunk group or groups for the customer at access tandem switches designated by NET where interLATA Feature Group D ("FGD") switching is provided. SBMS, as the FG2A customer, must secure a letter of agreement with the interLATA FGD provider prior to connecting to an interLATA FGD customer. All charges for interLATA transport are billed to the FGD customer in accordance with the appropriate access tariff.

FG2A is provided as trunk side switching through the use of access tandem switch trunk equipment with Multifrequency ("MF") Address signaling or Signaling System 7 ("SS7"). FG2A switching is provided with MF Address signaling or SS7 in both the originating and terminating directions. FG2A switching, when used to terminate calls on NET's network, may be used to access valid NXX codes in the LATA served by end offices subserving NET's access tandems. Under FG2A calls in the terminating direction will not be completed to local operator service (0- and 0+), Directory Assistance service, 911 emergency reporting service, exchange telephone repair, time or weather announcement services, 800 and 900 services and community information services of an information service provider.

Under this Agreement, NET will collect and interconnect SBMS' FG2A traffic originating and terminating from the SBMS' Mobile Telephone Switching Office ("MTSO") with all other providers of telecommunications services having interconnection arrangements with NET in Massachusetts, in accordance with the applicable access tariff.

Both parties agree to exchange all call detail records associated with FG2A switched access traffic in a timely fashion, as necessary to accurately and reliably rate and bill third parties for such traffic.

b) RECIPROCAL TRAFFIC EXCHANGE ARRANGEMENT

Description. For purposes of this Agreement, the term "wireless traffic" shall refer to all intraLATA intrastate (Massachusetts) calls that are between a user of a SBMS-provided mobile service where SBMS provides the wireless equivalent of dial tone to that user, and a user of an NET-provided local exchange service where NET provides the dial tone to that user and where both the SBMS and NET-provided services bear NPA-NXX designations associated with the same LATA. The term "local traffic" shall be defined as wireless traffic which originates and/or terminates within a local calling area, as defined in Massachusetts Tariff D.P.U. No. 10, Section 5. The parties agree to jointly determine a methodology, independent of this agreement, to identify local traffic. Based on this methodology SBMS shall provide NET with quarterly updates of the aggregate percentage of local or toll termination in accordance with subparagraph (1) below.

Each party will reciprocally terminate wireless traffic originating on the other's network via FG2A terminating access arrangements provided in accordance with NET's intrastate access tariff, except as modified herein. Nothing herein shall be construed to limit the ability of either party to terminate traffic with one another via terminating access arrangements other than FG2A. The FG2A arrangements shall be engineered to an objective B.01 grade of service. Common channel signaling ("CCS") will be provided where and as available. For traffic for which CCS is not available, in-band MF signaling will be forwarded. The FG2A arrangements used by either party to terminate wireless traffic pursuant to this Agreement may also be employed to terminate any other FG2A traffic to that party, subject to payment of the applicable tariffed charges for such other traffic.

Compensation. Upon ordering Switched Access Service and on a quarterly basis, SBMS shall provide NET with updated percentage of use factors for traffic terminated over the FG2A arrangements, as follows:

(1) Effective on the first day of January, April, July and October, SBMS shall report to NET the percentages of intrastate intraLATA non-local and local minutes of use which SBMS terminated to NET during the preceding calendar quarter, by FG2A arrangement, by LATA. SBMS shall report the revised percentages so that they are received by NET no later than the 21st day of January, April, July and October.

(2) The percentages of use changes so reported will be used by each party as the basis for billing over the next three months and the changes will be effective on the bill date of the month immediately following the effective quarter. No prorating or back billing will be done based on the reported percentages. SBMS shall use all necessary efforts to ensure that calls are properly reported and will cooperate with reasonable requests of NET to audit such efforts. Audits shall be limited to an examination of the data and NET agrees that such information is the propriety and confidential property of SBMS and subject to the non-disclosure agreement between the parties.

SBMS may need to establish out-of-band signaling or separate trunk groups in order to correctly measure and bill compensation for intraLATA traffic originating on NET's network. At SBMS' request, NET will measure that usage at each of its end offices and make it available to SBMS, at no charge, on an interim basis, for the purpose of its compensation billing calculation.

SBMS and NET shall compensate each other for terminating traffic at the effective FG2A rates contained in NET's effective Massachusetts access tariff, except that each party shall reciprocally compensate one another for terminating each others' FG2A local traffic at an average rate of \$0.015 per minute. Originating access charges will apply depending on the calling plan SBMS has selected, as defined in Mass. - D.P.U. - No. 15, Section 6, paragraph 6.3.4

NET will not compensate for calls that do not originate on NET's network, i.e., calls originating on the network of an interexchange carrier ("IXC"), Independent Telephone Company, Competing Local Exchange Carrier, or another cellular or wireless carrier, or calls made to paging services.

c) NETWORK PLATFORMS

- (1) 9-1-1/E9-1-1:
INFORMATION SERVICES:
DIRECTORY ASSISTANCE AND OPERATOR SERVICES

NET currently provides SBMS with access to Basic 911 and E911, Information Services, and Directory Assistance ("DA") and operator (0- and 0+) Services using FLEXPATH Service, in accordance with NET'S exchange service tariff (D.P.U. No. 10, Part C, Section 5).

(2) CLASS INTER-OPERABILITY

Description. Each party will provide CCS to the other, where available, in conjunction with all wireless traffic, in order to enable full inter-operability of CLASS features and functions. All CCS signaling parameters will be provided including originating line information ("OLI") calling party category, charge number, etc. All privacy indicators will be honored, and NET and SBMS will cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate full inter-operability of CCS-based features between their respective networks.

2. RESPONSIBILITIES OF THE PARTIES

- a) Each party agrees to treat the other fairly and non-discriminatorily for all items included in this Agreement, or related to the support of items included in this Agreement.
- b) Both parties will work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, or any other services related to this Agreement.
- c) NET will support SBMS requests related to central office (NXX) code administration and assignments in an effective and timely manner. Both parties will comply with code administration requirements as prescribed by the Federal Communications Commission, the Massachusetts Department of Public Utilities, and accepted industry guidelines.

3. TERM

Both parties agree to provide service to the other in accordance with this Agreement until 30 days after either the federal or state regulatory authorities, as appropriate, have established terms for Local Exchange Carrier (NET) - Commercial Mobile Radio Service provider (SBMS) interconnection. Thereafter, the parties shall either extend this agreement or renegotiate its terms in accordance with such regulatory principles and directions as are determined to control such interconnection, notwithstanding that either party may appeal such determination.

4. TARIFFS

If deemed necessary by the parties and/or the state and federal regulatory agency, for some or all of the arrangements described herein, the parties agree to file tariffs with the Massachusetts Department of Public Utilities and/or the Federal Communications Commission reflecting the terms of this Agreement within 30 days of the execution of this Agreement.

5. INSTALLATION

NET and SBMS shall effectuate all the terms and conditions covered in this Agreement within 90 days of execution, and will move forward on the implementation and operation of the terms of this Agreement in advance of any regulatory action which may or may not be required to implement any arrangement contained herein.

6. NETWORK MAINTENANCE AND MANAGEMENT

Both parties will work cooperatively to install and maintain a reliable network. They will also work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

7. TERMINATION

Either party may cancel the service provided hereunder at any time upon 60 days written notice to the other party.

8. OPTION TO ELECT OTHER TERMS

If, at any time while this Agreement is in effect, either of the parties to this Agreement provides arrangements similar to those described herein to a third party for such local traffic pursuant to contract or tariff, on terms different from those available under this Agreement, then the other party to this Agreement shall have the option to take service subject to the rates, terms, and conditions offered to the third party. This option may be exercised by delivering written notice to the other party. The party exercising its option under this paragraph must continue to provide services to the other party as required by this Agreement, subject either to the rates, terms, and conditions applicable to the third party or to the rates, terms, and conditions of this Agreement, whichever is more favorable to the other party.

9. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform under the terms of this Agreement which failure or delay is due in whole or in part to a force majeure condition. "Force majeure" means causes beyond a Party's reasonable control including, but not limited to, acts of God, labor disputes, regulatory action or inaction.

10. LIMITATION OF LIABILITY

In no event shall either party be liable to the other in connection with the provision or use of their services for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits, regardless of the form of action, whether in contract, indemnity, warranty, strict liability or tort, including (without limitation) negligence of any kind.

11. POLICY POSITIONS

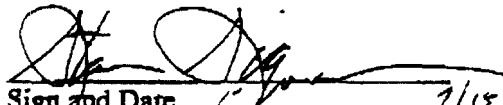
The Agreement herein is made without prejudice to the positions any party has previously advanced or may advance in the future in any regulatory or other public forum regarding the terms, conditions, structure or rates.

12. SERVICE STANDARDS

Each party shall provide service to the other under the same service standards, including intervals, as is provided to all other customers for the same services.

13. EFFECTIVE DATE

If this Agreement is acceptable to both parties, each will sign in the space provided below. This Agreement shall not bind either party until executed by both parties, and shall become effective at the earliest date permitted by law.


Sign and Date 7/15/96

Stan Sigman
Print Name

President & CEO
Position/Title

SOUTHWESTERN BELL MOBILE SYSTEMS ("SBMS")

 7/12/96
Sign and Date

Jacob J. Goldberg
Print Name

Vice President
Position/Title

New England Telephone
& Telegraph Company
("NET")

Kathy Dowling
President & General Manager

CELLULARONE

July 11, 1996

100 Lowder Brook Drive
Westwood, MA 02090
Tel: 617-462-5930

Mr. Antonio Yanez, Managing Director
NYNEX Corporation
222 Bloomingdale Road
White Plains, NY 10605

RE: Interim Interconnection Agreement (the "Agreement") Between Southwestern
Bell Mobile Systems d/b/a Cellular One and New England Telephone
and Telegraph Company d/b/a NYNEX

Dear Mr. Yanez:

Pursuant to the terms of the Agreement, this letter sets forth the methodology to identify local traffic. As discussed in the meeting of July 9, 1996, Cellular One will identify as local calls all calls which terminate to a NYNEX end office which are fifteen (15) air land miles from the location of the Cellular One cell site originating such call. Air land mileage shall be determined by utilizing the V & H coordinates found in the Local Exchange Routing Guide for your end offices. We have committed to provide you with the percentage of local and non-local calls terminated to the NYNEX network based upon a data sample consisting of no less than 5 week days and 2 weekend days per month analyzed for the provision of the quarterly updates as set forth in the Agreement. We will be providing you with these figures for the beginning of the Agreement by July 21st.

I have prepared duplicate originals of this letter. If these terms are acceptable, please sign in the space provided below and return one executed original to me. We look forward to a productive relationship as we move forward under the terms of the Agreement.

Sincerely,

Agreed to:


Kathy Dowling
President and General Manager

By: 
Antonio Yanez
Managing Director
NYNEX Corporation

000000000000000000

From  Southwestern Bell